Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

ROADWAY EXPRESS, INC.,

Petitioner,

v.

RAYMOND FISKE,

Respondent.

On Petition For A Writ Of Certiorari To The Maryland Court Of Special Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the Full Faith and Credit Clause and 28 U.S.C. § 1738 require that Maryland recognize a Commutation Order for workers' compensation benefits from Delaware?

PARTIES TO THE PROCEEDINGS

The petitioner in this Court, Roadway Express, Inc. is an employer and insurer in the Workers' Compensation Commission and Appellee at the Circuit Court and Court of Special Appeals. The respondent, Raymond Fiske, was the employee at the Workers' Compensation Commission and the Appellant at the Court of Special Appeals.

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OPINION BELOW

The petitioners ask this Court to review the opinion of the Court of Special Appeals in *Fiske v. Roadway Express, Inc.* The unreported opinion is reproduced, along with the Delaware Industrial Accident Board's Stipulation and Order of Commutation and the relevant authorities, in the Appendix.

JURISDICTIONAL BASIS

This Petition asks the Court to review the December 11, 2002, opinion and judgment of the Maryland Court of Special Appeals. The Maryland Court of Special Appeals reversed a decision of the Kent County Circuit Court which had dismissed the respondent's claim for workers' compensation benefits because it held that the Delaware laws and Commutation Order were not entitled full faith and credit because neither contained the unmistakable language of exclusivity. Should the Court grant the petition, it would have jurisdiction pursuant to 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

United States Constitution, Article IV, Section 1:

> Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner

in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Delaware Annotated Code, Article 19, Section 2358 (2002):

§ 2358. Commutation of compensation

Upon application of either party, and on due notice to the other, the compensation contemplated by this chapter may be commuted by the Board at its present value when discounted at 5% interest, with annual rests, disregarding, except in commuting payments due under § 2324 of this title, the probability of the beneficiary's death. Such commutation may be allowed if it appears that it will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or hardship to either party, or that such employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the whole or the greater part of the injured employee's or the dependents of a deceased employee's business or assets. It shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt created before the accident, other than a mortgage upon the injured employee's or the dependents of a deceased employee's or their home or household furniture.

STATEMENT OF THE CASE

This petition asks the Court to review the Maryland Court of Special Appeals' decision reversing the Circuit

Court of Maryland for Kent County's dismissal of respondent's workers' compensation benefit claim based upon the Full Faith and Credit Clause of the United States Constitution. The petitioner claims that the Full Faith and Credit Clause requires that Maryland courts examine the public policy considerations before determining that a supplemental award will not conflict with the awarding state's law rather than assessing whether the statute contains the "unmistakable language" of exclusivity.

As set forth in the record below, Messr. Fiske, a resident of the State of Delaware, was an employee of the petitioner when he was involved in a compensable accident in Maryland. He filed a claim with the Industrial Accident Board for the State of Delaware and was awarded temporary total benefits. Subsequently, respondent filed a claim for permanent impairment benefits and the parties negotiated and reached a settlement of the compensation claim. The Industrial Accident Board, pursuant to 19 Del. C. § 2358 (2002) accepted the agreement and ordered a commutation of benefits which was entered, signed by the parties and ordered by the Board on September 3, 2001. Delaware workers' compensation statute allows workers to commute their weekly awards to a one-time lump sum payment which is intended to satisfy the liability of the employer. A commutation is highly disfavored because of its final effect.

Subsequently, the respondent filed a Request with the Maryland Workers' Compensation Commission for a Rehearing on benefits. Petitioner raised the defense of accord and satisfaction and the Commission dismissed the claim. An appeal was taken to the Circuit Court for Kent County which affirmed the holding of the Commission. Thereafter, an appeal was filed to the Court of Special

Appeals which reversed the decision of the Circuit Court and remanded the case back to the Commission. The Court of Special Appeals concluded that because neither the Delaware workers' compensation statutory scheme or the Commutation Order contains the "unmistakable language" that it is exclusive of any other jurisdiction's award, Maryland is free to supplement benefits.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW INCORRECTLY FOCUSES EXCLUSIVELY ON THE "UNMISTAKABLE LANGUAGE."

The Court of Special Appeals' decision in this case suffers from a fundamentally flawed understanding of the Full Faith and Credit clause as expounded in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 282-283, 65 L. Ed. 2d 757, 100 S. Ct. 2647 (1980). *Thomas* was an effort by this Court to resolve the tension created between two earlier decisions in *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 64 S. Ct. 208, 88 L. Ed. 149 (1943) and *Wisconsin v. McCartin*, 330 U.S. 622, 630, 67 S. Ct. 886, 890, 91 L. Ed. 1140 (1947).

Magnolia was the first workers' compensation case to discuss the conflict between the mandate of full faith and credit. In *Magnolia*, the employee sought to collect workers' compensation under a Louisiana statute after collecting an award from Texas. The Supreme Court ruled that because the Texas award was entitled to full faith and credit in Louisiana, there could be no higher award under the Louisiana statute.

Three years later, in *McCartin*, this Court all but overruled *Magnolia Petroleum*. In *McCartin*, the employee executed a contract for payment of a specific sum in full settlement of the employee's right under Illinois law. The contract expressly provided, however, that it would "'not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin.'" 330 U.S. at 624.

Relying heavily on language in the Illinois award expressly stating that the award would not affect any rights under Wisconsin law, the Supreme Court reversed. *Id.* at 629-30. However, the Court did not rely exclusively on the contract provision reserving the employee's rights under Wisconsin law to distinguish the case from *Magnolia*. Instead, Mr. Justice Murphy's opinion gave different ground for the Court's holding when it said: "[The] reservation spells out what we believe to be implicit in [the Illinois Workmen's Compensation] Act – namely, that an . . . award of the type here involved does not foreclose an additional award under the laws of another state. And in the setting of this case, that fact is of decisive significance." 330 U.S., at 630. Therein, the Court held that "[o]nly some unmistakable language by a state legislature or judiciary would warrant our accepting . . . a construction" that a state workers' compensation statute "is designed to preclude any recovery by proceedings brought in another state," *McCartin*, 330 U.S. at 627-28. Unless the awarding state's statute contains this unmistakable language, the full faith and credit clause would not give extraterritorial impact to a workers' compensation decision. *Id.*

In *Thomas,* this Court upheld an award of supplemental benefits, after Virginia had awarded weekly benefits.

In an attempt to reconcile *Magnolia* and *McCartin*, the Supreme Court in the *Thomas* Court held that "[t]he rule of Industrial Comm'n of *Wisconsin v. McCartin*, 330 U.S. 622, authorizing a State, by drafting or construing its workmen's compensation statute in 'unmistakable language,' directly to preclude a compensation award in another State, represents an unwarranted delegation to the States of this Court's responsibility for the final arbitration of full faith and credit questions." *Thomas* at 261. The Full Faith and Credit Clause "is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." *Sherrer v. Sherrer*, 334 U.S. 343, 355. "To vest the power of determining the extraterritorial effect of a State's own laws and judgments in the State itself risks the very kind of parochial entrenchment on the interests of other States that it was the purpose of the Full Faith and Credit Clause and other provisions of Art. IV of the Constitution to prevent." *Thomas* at 261. Therefore it is clear that even if exclusive language was contained in Delaware's statute or in the Order this language would violate the purpose of the Clause.

Nevertheless, in *Wood v. Aetna Casualty & Sur. Co.*, 260 Md. 651, 273 A.2d 125 (1971); *M & G Convoy v. Mauk*, 85 Md.App. 394, 584 A.2d 101 (1991); *R & T Construction v. Judge*, 82 Md.App. 700, 573 A.2d 96, *cert. granted*, 321 Md. 46, 580 A.2d 1066 (1990), the appellate courts of Maryland continue to use the unmistakable language as the determining factor of whether or not Maryland can award supplemental benefits. The Court of Appeals stated:

"[A]n award already obtained under the workmen's compensation act of one state would not bar a proceeding under another applicable state act (provided the amount paid by a prior award in the first state will be credited on the second award), unless the act under which the award was first made was designed to preclude recovery of a further award under another state's law." *Wood* at 657.

In light of *Thomas*, this analysis is no longer useful as a basis in determining whether a supplemental claim for workers' compensation violates the Full Faith and Credit Clause. The Court of Special Appeals' holding that neither Delaware's workers' compensation statutory scheme nor the Stipulation and Order of Commutation contained "unmistakable language" contravenes the purposes of the Full Faith Credit Clause. App. 15-16. This Court should reverse the lower court's misreading and misapplication of the Full Faith and Credit Clause. This Court has not hesitated in the past to review and reverse lower court decisions at odds with this Court's constitutional precedents.

THE DECISION BELOW INCORRECTLY FAILS TO CONSIDER THE PUBLIC POLICY CONSIDERATIONS OF A COMMUTATION ORDER FROM THE AWARDING STATE.

In *Alaska Packers Assn. v. Industrial Accident Commission*, 294 U.S. 532 (1935), the Court recognized that more than one state may have a valid interest in litigating a claim. Thus, the Court altered the focus of the inquiry to that of the states' interests by determining that, where one state's statute conflicts with another's, a court should balance the "governmental interests of each jurisdiction." The approach taken in *Alaska Packers* was

reaffirmed four years later in *Pacific Employers Insurance Co. v. Industrial Accident Commission*, 306 U.S. 493 (1939). In *Pacific Employers*, the Court determined that California could apply its workers' compensation law to an accident in California involving a Massachusetts employee. The Court stated that "full faith and credit does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." In 1981, the Court declared in *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981), that the test to determine if a state's application of its own law was constitutionally permissible should be based upon whether the state had a "significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair."

Likewise, in *Thomas*, the plurality based its decision on an interest-balancing analysis and rejected the approaches of both *Magnolia* and *McCartin*. The opinion identified three relevant state interests: (1) an awarding state's interest in limiting the liability of employers within the state and their insurers; (2) the interests of both jurisdictions in compensating the injured worker; and (3) the awarding state's interest in having the integrity of its administrative proceedings respected by other states. The Court of Special Appeals failed to give consideration to any of these factors.

Delaware's interest in limiting the liability of its employers and insurers is self-evident in its transmuting an award to a commutation. A commutation is the right to receive a fixed payment as a substitute for periodic payments. Commutation of workers' compensation may be

allowed if it appears to be in the best interest of the employee or it will avoid undue expense or hardship to either party. 19 Del. C. § 2358. Workers' compensation law contemplates Board approval of any settlements of a claim for benefits. *Moore v. Chrysler Corp., Del. Supr.*, 233 A.2d 53 (1967). Unlike a compensation award which is an evolving remedy, staying with the claimant from the moment of the accident to the time he is fully restored to normal earning capacity, a commutation is a single judgment. The commutation is the equivalent of a money judgment. It is potentially identical with a judgment in an action based on fault. The applicable standard the Board applies when considering a Motion to Reopen is the same used for a final judgment. *Keith v. Melvin L. Joseph Constr. Co., Del. Super.*, 451 A.2d 842 (1982). Clearly the commutation is an attempt by the awarding forum to end litigation. The Court of Special Appeals agreed that finality was the purpose of the commutation statute. App. 15.

Maryland, by allowing a supplementary award, frustrates purposes of Delaware's commutation statute. By assuring the parties to a litigation that the judgment rendered will be final and binding, the state creates incentives for the parties to introduce, in a single litigation, all of the facts and law relevant to resolution of the controversy between the parties. Second, there is no adverse preclusive effect to a worker's ability to make the correct initial choice of forum since a claimant who seeks commutation would be most likely unable to carry his burden for seeking commutation without the aid and advice of counsel. When a second forum permits relitigation of a judgment rendered in the first forum, the benefits of relitigation are often felt in the second forum, while the

costs are felt only in the originating forum. Without full faith and credit obligations, each judgment would be subject to a measure of second-guessing throughout the nation, reducing the value of the legal system as a dispute-resolution mechanism.

As to judgments, the full faith and credit obligation is exacting. A final judgment in one state, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. See, e.g., *Matsushita Elec. Industrial Co. v. Epstein*, 516 U.S. 367, 373, 134 L. Ed. 2d 6, 116 S. Ct. 873 (1996). Arbitration awards have traditionally been afforded full faith and credit. See, e. g., *Pan American Food Co. v. Lester Lawrence & Son, Inc.*, 147 F.Supp. 113 (ND Ill. 1956); *United States Plywood Corp. v. Hudson Lumber Co.*, 127 F.Supp. 489 (SDNY 1954); *Port Realty Development Corp. v. Aim Consolidated Distribution, Inc.*, 90 Misc. 2d 757, 395 N.Y.S.2d 905 (1977).

The *Thomas* Court drew a sharp distinction between a court of general jurisdiction and an administrative tribunal when it held that the supplementing jurisdiction did not have to render. Typically, a workmen's compensation tribunal may only apply its own State's law. Since full faith and credit must be given to the determination that a commission had the authority to make, by a parity of reasoning, full faith and credit need not be given to determinations that the tribunal had no power to make. Thus, the *Thomas* Court held that the supplementing jurisdiction was not required to give full faith and credit to the awarding state. As distinguished from *Thomas*, Delaware's award was intended to be a final award, not just as to Delaware. When a claimant requests of a tribunal that his

award be paid in a lump sum, which by its nature is considered final, he is asking for the court to adjudicate future rights. Those are the same future rights which the second jurisdiction will be deciding. Accordingly, it makes an administrative award an ordinary judgment entitled to full faith and credit.

One purpose of the Full Faith and Credit Clause is to bring an end to litigation, as this Court noted in *Riley v. New York Trust Co.*, 315 U.S. 343, 348-349 (1942). The State Court should not be permitted to ignore this purpose by engaging in a pointless exercise of looking for Delaware's "unmistakable language. At the very least, the Full Faith and Credit Clause is due a thoughtful examination which balances the interests of both jurisdictions.

CONCLUSION

This Court should grant the writ and reverse the judgment below.

Respectfully submitted,

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2217

September Term, 2001

RAYMOND FISKE

v.

ROADWAY EXPRESS, INC., et al.

Davis,
Eyler, Deborah S.,
Barbera,

JJ.

Opinion by Barbera, J.

Filed: December 11, 2002

The sole issue we decide in this appeal is whether an employee is precluded from seeking benefits from an employer under the Maryland Workers' Compensation Act after having been awarded benefits in a sister state and subsequently having agreed to a commutation of those benefits in that state. We hold that the employee is not so precluded.

Appellant Raymond Fiske was formerly employed by Roadway Express, Inc. ("Roadway Express"), which,

together with its insurer, Old Republic Insurance Company, are appellees in this appeal. Fiske drove a tractor-trailer for Roadway Express along routes that were almost exclusively in Maryland. On January 12, 1996, in the course of his employment, Fiske injured his back as a result of a multi-vehicle collision in Maryland. Fiske resided in Delaware at the time of the accident.

Fiske filed a claim for workers' compensation benefits with the Industrial Accident Board of the State of Delaware ("the Board"). The Board found Fiske's injury to be compensable and awarded him temporary total disability benefits.

Nearly one year later, Roadway Express filed a petition to terminate Fiske's disability benefits. Fiske, unable to return to work, filed a petition for permanent impairment benefits. This prompted the parties to begin negotiating Fiske's entitlement, if any, to future benefits. The negotiations resulted in Fiske's filing a "Petition for Commutation."

The parties thereafter reached a settlement on the compensation claim. On September 3, 1997, the parties signed a "Stipulation and Order of Commutation" ("the Agreement"). The Agreement states, in relevant part:

> NOW, THEREFORE, upon hearing by the Industrial Accident Board of Employee's Petition for Commutation of all workers' compensation benefits, IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, subject to the Order of the Industrial Accident Board, as follows:
>
> 1. Employee's Petition to Commute all workers' compensation benefits, including but not

limited to, total disability benefits, partial disability benefits, permanent impairment benefits, disfigurement benefits and death benefits relating to the injuries of January 12, 1996 that were, are, or may be due or payable to Employee or his dependents is hereby consented to and stipulated to by the parties on the following terms:

A. Employee agrees to a total commutation, *except for medical benefits*, of any and all potential workers' compensation benefits.

B. Employer will pay Employee the sum of $25,000.00 in a lump sum in consideration of the commutation.

C. It is anticipated that a civil action or actions will be filed against the third party tortfeasor. It is agreed that Employer retains its workers' compensation lien for any and all benefits paid to, or on behalf of, Employee against any third party recovery.

2. Following the Order of the Industrial Accident Board, Employee shall be precluded from ever petitioning the Industrial Accident Board for any additional compensation benefits related to the injuries sustained on January 12, 1996, including, but not limited to, benefits pursuant to 19 *Del. C.* §§ 2324, 2325, 2326 and 2330, *except that medical benefits are excluded from this commutation.*

3. Any and all Petitions previously filed by or on behalf of Raymond F. Fiske are withdrawn with prejudice.

4. The period within which Raymond F. Fiske has to appeal this award entered by the Industrial Accident Board on this 3rd day of September 1997 is waived so that said Order is final and binding as of the date of its issuance, September 3rd, 1997.

By order signed the same day, the Board accepted the Agreement.

Fiske thereafter filed a claim for workers' compensation benefits in Maryland for injuries arising out of the 1996 accident that was the subject of the Agreement. Fiske states in his brief that he filed this claim in part because his "medical condition was a continuing matter, requiring two surgeries even after the Delaware worker compensation claim was concluded," and because "[h]e had not been able to return to work as a truck driver."

On September 24, 1999, the Workers' Compensation Commission of Maryland ("the Commission") conducted an evidentiary hearing regarding Fiske's claim for benefits. At the hearing, Roadway Express challenged Fiske's benefit claim on the grounds of: (1) accord and satisfaction; (2) statute of limitations; (3) jurisdiction; and (4) election of remedies. The Commission thereafter issued its order denying the claim. The order stated, in relevant part:

> The Commission finds on the first issue presented that the employer and insurer are entitled to a finding of Accord and Satisfaction because the Industrial Accident Board of the State of Delaware approved a Stipulation and passed an Order of Commutation dated September 3, 1997. The Commission further finds that all of the remaining issues are moot.

Fiske filed a request for rehearing and reconsideration of the Commission's decision. The Commission granted the requested rehearing but, after hearing further arguments of the parties, denied the request for reconsideration.

Fiske thereafter petitioned the Circuit Court for Kent County for judicial review of the Commission's ruling. The parties filed cross motions for summary judgment. Roadway Express argued that the Agreement operated as an accord and satisfaction of Fiske's claim for benefits in Maryland. Fiske, in turn, argued that Delaware law did not preclude him from filing a claim in Maryland.

On November 15, 2001, the parties' cross motions for summary judgment came on for a hearing. The court heard argument from counsel, then granted Roadway Express's motion, stating:

> I have had an opportunity to review the cases and the law and, in this case, I find there is no dispute as to the material facts. I further find that . . . this State, the State of Maryland, would give full faith and credit to the accord and satisfaction entered in the State of Delaware. And I find that the Employer/Insurer is entitled to judgment as a matter of law. I will therefore grant the motion for summary judgment filed on behalf of the Employer/Insurer affirming the decision . . . thereby affirming the decision of the Workers' Compensation Commission.

An order to that effect was thereafter entered on the docket. Fiske filed this timely appeal and asks:

> Is a worker compensation claim in Maryland barred where a Maryland employee had proceeded with a worker compensation claim in another State for the same injury, which was

> resolved by settlement, if neither the settlement document nor the relevant statute of the prior State plainly and directly precluded or prevented the filing of a subsequent action elsewhere seeking additional benefits?

Answering this question in the negative, we vacate the judgment of the circuit court and remand with directions that the case be remanded for further proceedings before the commission.

DISCUSSION

The issue for our determination involves the propriety of the circuit court's grant of summary judgment in favor of Roadway Express. We review that question *de novo* asking only whether the court was correct in its decision on the law. *Muthukumarana v. Montgomery Co.*, 370 Md. 447, 473 (2002). Moreover, because the issue involves a pure question of law, the Commission's decision is not accorded a presumption of correctness, as Roadway Express suggests. *Montgomery Co. v. Smith*, 144 Md. App. 548, 554 n.4, *cert. denied*, 2002 Md. LEXIS 849 (2002)

The legal issue centers on whether the Agreement struck by the parties in Delaware precluded Fiske from seeking a separate workers' compensation award in Maryland. The parties seem to agree that the Court of Appeals' decision in *Wood v. Aetna Casualty and Surety Co.*, 260 Md. 651 (1971), sets forth the general rule relating to a claimant's seeking workers' compensation benefits in one state after having received benefits for the same injury in another state. The Court in *Wood* described the rule as follows:

> [A]n award already obtained under the workmen's compensation act of one state would not bar a proceeding under another applicable state act (provided the amount paid by a prior award in the first state will be credited on the second award), *unless the act under which the award was first made was designed to preclude recovery of a further award under another state's law.*

Id. at 657 (emphasis added). Roadway Express seizes upon the italicized language above for the proposition that the Agreement entered into by the parties under the auspices of 19 Del. C. § 2358 (1995) bars Fiske's subsequent Maryland claim. Fiske disagrees, and points to the fact that neither the statute upon which Roadway Express relies nor the Agreement itself contains language that would bar his claim in this State. In our view, Fiske has the better part of the argument.

We note at the outset that Roadway Express's argument was adopted by both the Commission and the circuit court by application of the principle of "accord and satisfaction." We explained that principle in *Kimmel v. Safeco Ins. Co.,* 116 Md. App. 346 (1997):

> "To constitute an accord and satisfaction in law . . . it is necessary that the offer of money be made in full satisfaction of the demand or claim of the creditor, and be accompanied by such acts or declarations as amount to a condition that if the money is accepted, it is to be in full satisfaction and of such a character that the creditor is bound to understand the offer."

Id. at 359, (quoting *Washington Homes, Inc. v. Baggett*, 23 Md. App. 167, 174 (1974)).

Whatever bar the principle of accord and satisfaction might erect to foreclose Fiske from seeking further compensation in Delaware for his injuries (other than for medical expenses, which were expressly excluded from the terms of the Agreement) begs the question whether the principle forecloses Fiske's pursuing a subsequent award in Maryland.[1] As we see it, this case is resolved, not by resort to accord and satisfaction, but by reference to the Full Faith and Credit Clause of the United States Constitution, as it has been applied to sequential workers' compensation actions in sister states.

In this regard, we do not write on a clean slate. We look to *Wood*, to Supreme Court cases that have been handed down before and since *Wood*, and to decisions of this Court and others of the Court of Appeals on the subject.

This body of law was summarized in *M & G Convoy, Inc. v. Mauk*, 85 Md. App. 394, *cert. denied*, 324 Md. 312 (1991). In *Mauk*, the appellants, an employer and its insurer, challenged the award of Maryland workers' compensation benefits to the employee, *Mauk*, after he had received benefits for the same injury in Pennsylvania. *Id.* at 396. We quote extensively from *Mauk*, below, as its discussion of the applicable law pertains equally to the instant case:

> Prior to 1943, with virtual unanimity, state courts had held that a prior award under the

[1] We offer no comment about the foreclosing effect of the Agreement on any attempts Fiske might make to obtain additional compensation in Delaware.

workers' compensation laws of another state was not a bar to an award under the local workers' compensation law provided that the prior award was deducted from the present award. Then in 1943, a substantial change occurred.

The Supreme Court held in *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943) [, *reh'g denied*, 321 U.S. 801 (1944)], that an injured employee could pursue his or her remedy in both Texas or Louisiana, but having chosen to pursue the remedy in the one jurisdiction, namely Texas, where the award was res judicata, the full faith and credit clause precluded him from seeking a remedy on the same grounds in Louisiana. The Court predicated its decision on the full faith and credit clause of the United States Constitution, holding that the Texas decision was a final one.

A few years later, the Supreme Court, again dealing with the full faith and credit clause in a workers' compensation case, held that the employee was not estopped from proceeding in Wisconsin, despite the receipt of benefits in Illinois. *Industrial Comm'n of Wis. v. McCartin*, 330 U.S. 622 (1947). The Court limited the effect of Magnolia to those cases in which the "unmistakable language" of the statute made the remedy exclusive for purposes of the full faith and credit clause. In *McCartin*, the Court reasoned that, because the Illinois law did not provide the "unmistakable" language necessary to invoke the full faith and credit clause and make the remedy exclusive, "the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted," (presumably, full relief) must be followed.

After considerable silence on the subject, the Supreme Court revisited the issue in 1980 in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980). The Court rendered a decision with a plurality of four with three justices concurring and two dissenting. The plurality in *Thomas* recognized that *Magnolia* had dramatically changed the law and that *McCartin* attempted to redress that change without overruling *Magnolia*. In actuality, the plurality accepted much of *McCartin* while concluding "that the substantial interests of the second State in these circumstances should *not* be overridden by another State through an unnecessarily aggressive application of the Full Faith and Credit Clause, as was implicitly recognized at the time of *McCartin*." The three concurring justices expressly stated they would not overrule either *Magnolia* or *McCartin*. They interpreted the situation in *Thomas* on the basis of the decision in *McCartin*: "I agree with the plurality that *McCartin* rather than *Magnolia*, is controlling as between the two precedents since the Virginia Workmen's Compensation Act lacks the 'unmistakable language' which *McCartin* requires if a workmen's compensation award is to preclude a subsequent award in another State." *Thomas*, 448 U.S. at 289-90 [(White, J., concurring)].

* * *

Appellants would have us conclude that the principal basis for the *McCartin* decision was that a settlement contract included a reservation of the right to proceed under the Wisconsin law, as well as Illinois. That position does not withstand scrutiny. Had that been the principal point in *McCartin*, the Court would have discussed that first and ended its opinion there. Clearly, the

Court wanted to make the larger and broader statement that the language of exclusiveness must be unmistakable, and relied on the purpose of the legislation. As the plurality in *Thomas* noted, "the Court could have relied exclusively on the contract provision reserving the employee's rights under Wisconsin law to distinguish the case from *Magnolia*. . . . "

Appellants argue that the Maryland Court of Appeals would follow *Magnolia* rather than *McCartin*.

* * *

Appellants' speculation that the Court of Appeals would follow *Magnolia* is best answered by the opinion in *Wood*. In *Wood*, the Court of Appeals determined the general rule relating to election of remedies and recovery in another state. The Court held the right to recover depends upon the workers' compensation act of the state where the claimant *first* elected. The Court stated:

> "[A]n award already obtained under the workmen's compensation act of one state would not bar a proceeding under another applicable state act (provided the amount paid by a prior award in the first state will be credited on the second award), *unless the act under which the award was first made was designed to preclude recovery of a further award under another state's law*."

That has been and remains the law of Maryland despite appellants' criticism of *McCartin*.

Id. at 398-402 (numerous citations omitted); *see also R & T Const. Co. v. Judge*, 323 Md. 514, 521 (1991) (noting that "Maryland does not prohibit supplementing the award made by one state with additional benefits available under the more liberal law of another state," absent a constitutional bar).[2]

The law, as recounted in *Mauk* and restated here, is clear. Unless the "act" of the awarding state with "unmistakable language" prohibits a subsequent award in a sister state, there is no bar to the claimant's seeking a subsequent recovery. As we have mentioned, Roadway Express looks to 19 Del. C. § 2358, addressing commutation of workers' compensation awards, as providing the "unmistakable language" that prohibits Fiske from seeking compensation in Maryland. We disagree.

The Delaware statute provides:

> Upon application of either party, and on due notice to the other, the compensation contemplated by this chapter may be commuted by the Board at its present value when discounted at 5% interest, with annual rests, disregarding, except in commuting payments due under § 2324[3]

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[2] Maryland is not alone in the view that *McCartin* severely curtailed, if not outright overruled *Magnolia*, and that the Supreme Court's decision in *Thomas* did nothing to disturb that view of the prevailing law. *See* 9 ARTHUR LARSON & LEX K. LARSON, WORKERS' COMPENSATION LAW § 141.01 (2000) (collecting cases).

[3] In its entirety, § 2324 provides:

> For injuries resulting in total disability occurring after July 1, 1975, the compensation to be paid during the continuance of total disability shall be 66 2/3% of the wages of the injured employee, as defined by this chapter, but the

(Continued on following page)

> of this title, the probability of the beneficiary's death. Such commutation may be allowed if it appears that it will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or hardship to either party, or that such employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the whole or the greater part of the injured employee's or the dependents of a deceased employee's business or assets. It shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt created before the accident, other than a mortgage upon the injured employee's or the dependents of a deceased employee's or their home or household furniture.

19 Del. C. § 2358 (1995).

This statute does not suggest, much less state in unmistakable language, that a commutation in Delaware bars Fiske from seeking an award in Maryland. We are

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> compensation shall not be more that 66 2/3% of the average weekly wage per week as announced by the Secretary of the Department of Labor for the last calendar year for which a determination of the average weekly wage has been made, nor less than 22 2/9% of the average weekly wage per week. If at the time of the injury the employee receives wages of less than 22 2/9% of the average weekly wage per week, then the employee shall receive the full amount of such wages per week, as compensation. Nothing in this section shall require the payment of compensation after disability ceases.

19 Del. C. § 2324 (1995).

guided in this conclusion by resort to the rules of statutory construction.[4]

In ascertaining the scope and applicability of 19 Del. C. § 2358, as with all statutes, "'the paramount objective is to ascertain and give effect to the intent of the legislature.'" *Breitenbach v. N.B. Handy Co.*, 366 Md. 467, 472 (2001) (citation omitted). The starting point in every case involving statutory construction is the language of the statute itself. *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 251 (2000). In order to ascertain the legislative intent, we ordinarily will not venture beyond the statute's clear and explicit terms. *Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 445 (1997).

By its explicit terms, 19 Del. C. § 2358 provides that an award of compensation may be commuted "if it appears that it will be for the best interest of the employee . . . or that it will avoid undue expense or hardship to either party." Notably, the language of 19 Del. C. § 2358 does not prohibit an employee from receiving a supplemental award in a sister state after entering into a commutation agreement. Nor does Roadway Express direct us to any other provision of the Delaware Workers' Compensation Act that addresses subsequent compensation claims in sister jurisdictions.

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[4] The parties have not addressed the principles of statutory construction under Delaware law, nor have they suggested that Delaware principles of statutory construction vary in any significant way from those in Maryland. Therefore, we shall refer to Maryland principles of statutory construction.

To be sure, Roadway Express cites Delaware authority for the propositions that a commutation is to be granted only after a showing of unusual circumstances and for convincing reasons, *Molitor v. Wilder*, 57 Del. 83, 90, 195 A.2d 549, 552 (Del. Super. Ct.), *aff'd*, 196 A.2d 214 (Del. 1963); and that such agreements "shall be final and binding unless modified as provided in § 2347 of this title," 19 Del. C. § 2344. While this authority informs the "final" nature of the Agreement in Delaware, it in no way relates to the issue whether Fiske is barred from filing a separate compensation claim in Maryland.

Because neither 19 Del. C. § 2358 nor, as far as we can determine, any other provision of the Delaware Workers' Compensation Act contains unmistakable language prohibiting Fiske from receiving a supplemental award in Maryland, the circuit court erred in granting summary judgment in favor of Roadway Express. Moreover, to construe Delaware law, as Roadway Express would have us do runs contrary to the prevailing public policy in that state that workers' compensation laws are to be liberally construed in favor of the claimant. *Johnson Controls, Inc. v. Fields*, 758 A.2d 506, 509 (Del. 2000). Maryland shares this policy concerning workers' compensation. *Mayor and City Council of Baltimore v. Cassidy*, 338 Md. 88, 97 (1995).

Although not briefed, Roadway Express raised at oral argument that the terms of the Agreement itself prohibit Fiske from seeking recovery in Maryland. We are not at all convinced that the rule of *Woods* permits us to look to the terms of the Agreement in determining whether Fiske has a right to proceed in Maryland. *See Woods*, 260 Md. at 657 (stating that an award under one workers' compensation act will not preclude a proceeding in a second state unless

the "*act*" of the awarding state "was designed to preclude recovery of a further award under another state's law"). Even assuming we could decide this case by reference to the Agreement, however, the outcome does not change.

The Agreement says nothing whatsoever about the filing of a supplemental claim for workers' compensation benefits in Maryland, or any other state with proper jurisdiction. The Agreement provides only that Fiske "shall be precluded *from ever petitioning the Industrial Accident Board* for any additional compensation benefits related to the injuries sustained" in January 1996 (emphasis supplied). Fiske, of course, is not petitioning the Board for additional compensation; instead, he is requesting benefits under Maryland's Workers' Compensation Act.

The Agreement also states that all "previously filed" petitions filed by Fiske are withdrawn. Fiske did not file a claim for Maryland benefits until *after* he had agreed to a commutation of Delaware benefits. Thus, even assuming, *arguendo*, that the parties had intended the Agreement to preclude the filing of any *future claim* in *any state*, the contractual language of the Agreement does not so provide. *See Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 746 (Del. 1997) (stating that "[c]ontract interpretation that adds a limitation not found in the plain language of the contract is untenable").

In sum, Delaware law does not preclude Fiske from seeking further compensation under Maryland's Workers' Compensation Act for the injuries he sustained in the 1996

accident. The court erred in granting summary judgment in favor of Roadway Express on that ground.[5]

JUDGMENT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR KENT COUNTY WITH DIRECTIONS TO REMAND TO THE WORKERS' COMPENSATION COMMISSION FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY APPELLEE.

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[5] The parties do not dispute that if Fiske were to receive benefits in Maryland, Roadway Express would be entitled to a credit for the award it paid in Delaware. *Wood v. Aetna Casualty and Surety Co.*, 260 Md. 651, 657 (1971). Nor do the parties dispute that the total compensation received by Fiske from Delaware and Maryland may not exceed the total compensation payable under Maryland law. Md. Code (1991, 1999 Repl. Vol.), § 9-609 of the Labor and Employment Article.

Raymond F. Fiske	*	IN THE
Claimant/Appellant	*	CIRCUIT COURT
vs.	*	FOR
ROADWAY EXPRESS	*	KENT COUNTY
Employer/Appellee	*	Case No.:
And	*	14-C-01-004890
Old Republic Insurance Company	*	
Insurer/Appellee	*	

* *

ORDER

(Filed Nov. 27, 2001)

The Appellees, Roadway Express, Inc., Motion for Summary Judgment having been read and considered with the opposition submitted thereto and all parties heard at oral argument before this Honorable Court on November 15, 2001, it is hereby ORDERED;

That Appellee, Roadway Express, Inc., Motion for Summary Judgment is GRANTED and that the Appellant's appeal from the Workers' Compensation Commission is DISMISSED.

This Honorable Court affirming the denial of compensation benefits to the claimant passed by the Workers' Compensation Commission.

WHEREFORE, it is ORDERED this 27th day of November, 2001, that the appeal filed by Ray Fiske is

DISMISSED and the Order of the Workers' Compensation Commission is affirmed.

/s/ J.F. Price
JUDGE, Circuit Court
for Kent County

CIVIL NO. C-01-4890
FILED 11-27 20 01
NO. 16,000

WORKERS' COMPENSATION COMMISSION
6 NORTH LIBERTY STREET
BALTIMORE, MARYLAND 21201-3785

CLAIM NO 8454358
CLAIMANT RAYMOND F. FISKE
EMPLOYER ROADWAY EXPRESS INC ORDER
INSURER OLD REPUBLIC INSURANCE CO.

Hearing was held in the above claim at Salisbury, Maryland on September 24, 1999 on the following issues:

1. Accord and satisfaction
2. Statute of limitations
3. Jurisdiction
4. Election of remedies

The Commission finds on the first issue presented that the employer and insurer are entitled to a finding of Accord and Satisfaction because the Industrial Accident Board of the State of Delaware approved a Stipulation and passed an Order of Commutation dated September 3, 1997. The Commission further finds that all of the remaining issues are moot.

It is, therefore, this 15th day of October, 1999 byt [sic] he [sic] Workers' Compensation Commission ORDERED that the above-claim is dismissed.

Patricia G Adams
COMMISSIONER
PATRICIA G. ADAMS
jnb
FILE COPY

ATTEST:
JUDITH L. JOHNSTON
SECRETARY
[SEAL]

WORKERS' COMPENSATION COMMISSION
6 North Liberty Street
Baltimore, Maryland 21201-3785

REQUEST FOR REOPENING, RECONSIDERATION, OR REHEARING

(Filed Oct. 28, 1999)

INSTRUCTIONS: This form is to be used by parties to a compensation claim only to request that a claim be reopened, that reconsideration be given to a decision following a hearing, or that a rehearing be authorized. Fill out this form as completely as possible and submit it to the Commission for appropriate action. *The form is to be used only for the actions identified below, and is to be submitted without a cover letter.*

REQUEST TO THE COMMISSION

The undersigned party to this Workers' Compensation Claim hereby requests that the action described below be taken as soon as possible. The requesting party warrants that a copy of this request and its enclosed documentation have been sent to other parties to the action.

CLAIM IDENTIFICATION

CLAIM NUMBER: B-454358

CLAIMANT'S NAME: Raymond F. Fiske

EMPLOYER: Roadway Express, Inc.

INSURER: Old Republic Insurance Company

TYPE ACTION REQUESTED:

Reopening due to a worsening of the claimant's condition.

X Reconsideration of a former decision, order, or award of the Commission.

X Rehearing.

REFERENCED DECISION, AWARD, OR ORDER: October 15, 1999

JUSTIFICATION/REASON FOR REQUEST: See attached letter.

REQUESTED BY:

Peter M. Callegary	/s/ Kenneth Macleay	October 28, 1999
FULL NAME (PRINT OR TYPE)	SIGNATURE	DATE OF REQUEST
CLAIMANT	EMPLOYER/	OTHER: ___
X CLAIMANT'S ATTY	INSURER EMP/INS ATTY	

WCC Form H27R (2/95) Cc. Kenneth G. Macleay, Esquire

IN THE INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RAYMOND F. FISKE,	)	
	)	
Employee,	)	I.A.B. No.: 1086537
	)	
v.	)	
	)	
ROADWAY EXPRESS, INC.,	)	
	)	
Employer.	)	

STIPULATION AND ORDER OF COMMUTATION

WHEREAS, Raymond F. Fiske ("Employee") sustained a compensable injury that occurred on January 12, 1996 when the truck that he was driving was struck head-on by another vehicle; and

WHEREAS, Roadway Express, Inc., ("Employer") accepted Employee's claim as being compensable; and

WHEREAS, on December 17, 1996 Employer filed a Petition to Terminate Employee's total disability; and

WHEREAS, Employee filed a Petition for permanent impairment benefits; and

WHEREAS, Employee and Employer have agreed to a total commutation of benefits pursuant to 19 *Del. C* § 2358 as a means of resolving this disputed claim, except that it is agreed that *causally related medical treatment shall be excluded from this commutation.*

NOW, THEREFORE, upon hearing by the Industrial Accident Board of Employee's Petition for Commutation of all workers' compensation benefits, IT IS HEREBY

STIPULATED AND AGREED, by and between the parties hereto, subject to the Order of the Industrial Accident Board, as follows:

1. Employee's Petition to Commute all workers' compensation benefits, including, but not limited to, total disability benefits, partial disability benefits, permanent impairment benefits, disfigurement benefits and death benefits relating to the injuries of January 12, 1996 that were, are, or may be due or payable to Employee or his dependents is hereby consented to and stipulated to by the parties on the following terms:

A. Employee agrees to a total commutation, *except for medical benefits,* of any and all potential workers' compensation benefits.

B. Employer will pay Employee the sum of $25,000.00 in a lump sum in consideration of the commutation.

C. It is anticipated that a civil action or actions will be filed against the third party tortfeasor. It is agreed that Employer retains its workers' compensation lien for any and all benefits paid to, or on behalf of, Employee against any third party recovery.

2. Following the Order of the Industrial Accident Board, Employee shall be precluded from ever petitioning the Industrial Accident board for any additional compensation benefits related to the injuries sustained on January 12, 1996, including, but not limited to, benefits pursuant to 19 *Del. C* §§ 2324, 2325, 2326 and 2330, *except that medical benefits are excluded from this commutation.*

3. Any and all Petitions previously filed by or on behalf of Raymond F. Fiske are withdrawn with prejudice.

4. The period within which Raymond F. Fiske has to appeal this award entered by the Industrial Accident Board on this 3rd day of September 1997 is waived so that said Order is final and binding as of the date of its issuance, September 3rd, 1997.

/s/ Raymond F. Fiske
Raymond F. Fiske
Employee

/s/ John J. Schmittinger
John J. Schmittinger
Attorney for Claimant

/s/ J. R. Julian
J. R. Julian
Attorney for Employer

SO ORDERED this 3rd day of September 1997.

/s/ [Illegible]
Chair

/s/ [Illegible]
Member

_____
Member

JRJ/kgb

ROADWAY EXPRESS, INC. et al.	*	**IN THE**
v.	*	**COURT OF APPEALS OF MARYLAND**
RAYMOND FISKE	*	**Petition Docket No. 571 September Term, 2002 (No. 2217, Sept. Term, 2001, Court of Special Appeals)**

ORDER

(Filed Dec. 26, 2002)

Upon consideration of the petition and amended petition for a writ of certiorari to the Court of Special Appeals, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and amended petition be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: December 23, 2002

No. 02-1416

IN THE

Supreme Court of the United States

ROADWAY EXPRESS, INC.,

Petitioner,

v.

RAYMOND FISKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

PETER M. CALLEGARY
P.O. Box 20075
Towson, MD 21284
(410) 337-3559

Attorney for Respondent

184251

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

SUMMARY OF THE ARGUMENT

The Maryland Court of Special Appeals in *Fiske v. Roadway Express, Inc.* properly refused to apply the Full Faith and Credit Clause of the United States Constitution after it carefully evaluated and applied the relevant Maryland and Supreme Court cases which recognized that this case is governed by the "[U]nmistakable language" standard described in *Industrial Comm'n of Wis. v. McCartin*, 330 U.S. 622 (1947) and left intact by the Supreme Court in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980).

ARGUMENT

The Maryland Court of Special Appeals opined that *Fiske v. Roadway Express, Inc.* would be decided "[B]y reference to the Full Faith and Credit Clause of the United States Constitution as it has been applied to sequential workers' compensation actions in sister states". App. 8.

The Maryland Court further recognized that the issue in *Fiske* was one which was not determined "[O]n a clean slate" App. 8. and would be decided by looking to a line of Maryland and Supreme Court cases beginning with the Supreme Court's decisions in *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943) [*,reh'g denied*, 321 U.S. 802 (1944) and *Industrial Comm'n of Wis. v. McCartin*, 330 U.S. 622 (1947), *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) and the Maryland Court of Appeals decision in *Wood v. Aetna Casulty and Surety Co.*, 260 Md. 651 (1971). App. 8-11.

The *Fiske* court concluded that the Supreme Court in *Thomas* left intact the "[U]nmistakable language" standard

as described by *McCartin* when it expressly refused to overrule its previous ruling in *McCartin* App. 10.

After its analysis, the Maryland Court of Special Appeals opinion below answered Petitioner's contentions unequivocally when it quoted from the holding of the Maryland Court of Appeals in *Wood*:

> "'[A]n award already obtained under the workmen's compensation act of one state would not bar a proceeding under the applicable state act (provided the amount paid by a prior award in the first state will be credited on the second award), *unless the act under which the award was first made was designed to preclude recovery of a further award under another state's law.*'
>
> That has been and remains the law of Maryland . . ." App. 11.

Petitioner's further assertion that the Court of Special Appeals decision failed to consider "[P]ublic policy considerations" is not supported by the Supreme Court's analysis in *Thomas* which the Maryland Court of Special appeals correctly characterized as expressly refusing to overrule *McCartin's* holding. App. 10.

Finally, the Supreme Court in *Thomas* held:

> "[T]hat a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award when the second State would have had the power to apply its workmen's

compensation law in the first instance. The Full Faith and Credit Clause should not be construed to preclude successive workmen's compensation awards. Accordingly, *Magnolia Petroleum Co. v. Hunt* should be overruled." *Thomas*, 448 U.S. at 289-290

CONCLUSION

Therefore, for the reasons stated above the Petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

PETER M. CALLEGARY
P.O. Box 20075
Towson, MD 21284
(410) 337-3559

Attorney for Respondent